

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.261 OF 1988**

Nandalal Devikisan Heda & Ors. ...Appellants
Vs.
Smt.Bhagiratibai Sadashi Jadhav & Ors. ...Respondents
Ms Urmila Sanil for the Appellants
Mr.D.S.Sawant for the Respondents.

**CORAM: A.S.OKA, J.
DATED: MARCH 27, 2006.**

P.C.:

1. The Appeal was initially filed by the Appellant No.1-Insured, Appellant No.2 which is the Insurance company and the Appellant No.3-Driver. The record shows that after the Advocate representing the Appellants expired, court service notice was issued to the Appellants. The report of the bailiff dated 28th June 2004 shows that the Appellant No.1 was duly served with the notice on 26th June 2004. None appears for the Appellant No.1. The Appeal already stands dismissed for want of prosecution as far as the Appellant No.3 is concerned. Ms Urmila Sanil appears for Appellant No.2. As none has appeared for Appellant No.1, Appeal is dismissed for want of prosecution in so far as Appellant No.1 is concerned.

2. A query was made to the learned Advocate for the Appellant No.2 as to whether the Appeal will be maintainable only at the instance of Appellant No.2 as the challenge to the impugned Award is on the ground of negligence and

quantum. The learned Advocate for the Appellants stated that the Appeal will not be maintainable only at the instance of Appellant No.2.

3. Faced with this difficulty, the learned Advocate sought time to find out whether the Appellant No.1 insured is willing to prosecute the Appeal. The request for grant of time cannot be acceded to as the Appellant No.1 is served with the court service notice on 26th June 2004. Vakalatnama of the Insurance Company is filed on 18th February 2005. This Appeal was on board on 8th March 2006. By order passed on that date, the Appeal was dismissed for want of prosecution as against Appellant No.3. Thus, from 28th June 2004 till date no steps are taken by the Appellant No.1. If the Appellant No.1 who is served with the notice in June 2004 has not taken any steps for last more than eighteen months, he is obviously not interested in prosecuting the Appeal. In the Appeal of the year 1988, adjournment cannot be granted as of today to enable the Insurance Company to contact the Appellant No.1. That step ought to have been taken by the Insurance Company in February 2005 when Vakalatnama of the Insurance Company was sent to the Advocate.

4. Thus, it is very clear that now this Appeal is surviving on as far as the Insurance company is concerned. Obviously, the First Appeal by the Insurance company is not maintainable

and is dismissed as such.

Judge.